**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2579 OF 1993**

Shri Shivaji Co-op. Housing
Society Ltd., .. Petitioner.

vs.

Shashikant Rajaram Godambe
& Ors. .. Respondents.

Ms. S.M. Dandekar for petitioner.
Mr. Prashant Naik for Respondent No. 1.

**CORAM : A.P. DESHPANDE, J.**

**DATE : 8th November, 2006.**

P.C.

. This is a petition filed by the co-operative housing society challenging the order passed by Deputy Registrar, Co-operative Societies, Pune dated 18.7.1990 which is confirmed by the Divisional Joint Registrar, Co-operative Societies, Pune vide judgment and order dated 8.10.1990 so also the order passed by the State Government dated 25.5.1992, yet again a revisional order. All the authorities below have concurrently found in favour of the respondent no. 1 about he being a deemed member of the society by virtue of Section 22 (2) of the Co-operative

Societies Act. The subject matter of this petition is a plot of land bearing no. 11 which was originally allotted to one Dr. M.R. Tawade who was the member of the society. The respondent no. 1 in this petition Shri S.R. Godambe was inducted as a tenant of the property by Dr. Tawade in the said housing society. The original member Dr. Tawade had instituted a suit for possession against the respondent no. 1/tenant. During the pendency of the suit, Dr. Tawade expired and the legal heirs of Dr. Tawade transferred the said plot, with the then existing construction, in favour of respondent no. 1. As the legal heirs of Dr. Tawade transferred the suit plot in favour of respondent no. 1 along with construction thereon, the transferee applied to the society for membership and declared his intention to abide by the rules and regulations of the society. He paid necessary membership fees so also made an application duly signed by the transferor and transferee to the society on 2.1.1990. The society did not communicate anything in regard to the acceptance or rejection of the application made by the respondent no. 1 and hence the respondent no. 1 preferred an application under Section 22 (2) of the Maharashtra Co-operative Societies Act before the Deputy Registrar with the request to declare him as a member of the society. The Deputy Registrar, after affording opportunity of hearing to the society by his order declared the

respondent S.R. Godambe to be a deemed member of the society by virtue of section 22 (2) of the Act. Section 22 (2) of the said Act reads thus :-

> "(2) Where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision or within three months [from the date of receipt of the application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application the applicant shall be deemed to have been [admitted] as member of the society.] [If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.]"

Sub-section (2) postulates that if the society does not communicate any decision to the applicant within three months from the date of receipt of such application, the applicant shall be deemed to have been admitted as the member of the society. The said sub-section further provides that if any question arises whether the person has become deemed

member or otherwise, the same shall be decided by the Registrar after giving reasonable opportunity of being heard to all the concerned parties. After making due enquiry and on being satisfied that the petitioner society has failed to communicate its decision to the applicant within three months from the date of receipt of the application, the Dy. Registrar allowed the application and made a declaration in favour of respondent no. 1 that he has assumed the status of a member of the society.

2. Perused the order passed by the Deputy Registrar, Co-operative Societies so also the order passed in revision by the Divisional Joint Registrar. The orders passed by the authorities go to elaborately consider the rival contentions and the impugned decision is reached making a declaration in favour of the respondent no. 1 that he has assumed status of a member by a deeming fiction under section 22 (2) of the Maharashtra Co-operative Societies Act. The learned counsel for the petitioner has contended that the transfer of the plot by the original member in favour of respondent no. 1 is in violation of clause 8 of the agreement dated 18.7.1951 entered in between co-operative society and the State Government through the Collector. Per contra, the learned counsel for the respondent pointed out that the society had moved the Government by filing a second

revision pointing out the non-compliance of clause 8 but the State Government has rejected the revision and thereby waived the breach of clause 8 of the agreement. That apart, what is to be seen is that the respondent no. 1 has purchased the plot sometime in the year 1990 from the original member and has also carried out the construction of a residential house and is settled there. Perusal of the impugned orders reveal no perversity in the same. In the facts and circumstances of the present case, no interference with the impugned orders is called for. As such, writ petition is dismissed. Rule discharged.

**(A.P. Deshpande, J.)**